

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

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|-----------------------------|---|---------------------------------------|
| IN RE APPLICATION OF: | § | ATTY. DOCKET NO.: RSW920030281US1 |
| | § | |
| ROBERT THOMAS UTHE | § | EXAMINER: NAJEE-ULLAH, TARIQ S. |
| | § | |
| SERIAL NO.: 10/772,881 | § | CONFIRMATION NO.: 5540 |
| | § | |
| FILED: 05 FEBRUARY 2004 | § | ART UNIT: 2456 |
| | § | |
| FOR: METHODS, SYSTEMS AND | § | |
| COMPUTER PROGRAM | § | |
| PRODUCTS FOR SELECTING | § | |
| AMONG ALERT | § | |
| CONDITIONS FOR | § | |
| RESOURCE MANAGEMENT | § | |
| SYSTEMS | § | |

APPEAL BRIEF UNDER 37 C.F.R. 41.37

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Sir:

This Brief is submitted in support of the Appeal of the Examiner's final rejection of Claims 10-12 in the above-identified application. A Notice of Appeal was filed in this case and received in the Patent Office on November 14, 2008. Please charge the fee of \$540.00 due under 37 C.F.R. §41.20(b)(2) for filing the brief, as well as any additional required fees, to **IBM's Deposit Account No. 09-0461.**

REAL PARTY IN INTEREST

The real party in interest in the present Application is International Business Machines Corporation, the Assignee of the present application as evidenced by the Assignment set forth at reel 014755, frame 0905.

RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences known to Appellant, the Appellant's legal representative, or assignee, which directly affect or would be directly affected by or have a bearing on the Board's decision in the pending appeal.

STATUS OF CLAIMS

Amended claims 10-12 stand finally rejected by the Examiner as noted in the Advisory Action dated July 11, 2008. The rejection of Claims 10-12 is appealed.

STATUS OF AMENDMENTS

Appellant's Amendment C, filed on September 29, 2008, was entered by the Examiner, as noted in the Advisory Action. Pursuant to Amendment C, claims 10-12 were amended such that they are each placed in independent form by each incorporating the limitations of claim 1 and intervening claim 9. Claims 1-9 and 13-20 were canceled to remove issues for appeal. Moreover, the above claim amendments have been entered by the Examiner as noted in the Advisory Action.

SUMMARY OF THE CLAIMED SUBJECT MATTER

Independent Claim 10 recites a method of selecting among a plurality of alert conditions (p. 1, lines 29-31; p. 8, lines 4-6; p. 9, lines 6-7; FIG. 1, ref. no. 150; FIG. 2, ref. no. 234; FIG. 3 and 4, ref. no. 320) for processing with a resource management system (p. 1, line 31; p. 4, line 22; FIG. 1, ref. no. 130; FIG. 2, ref. no. 228). The method includes associating a priority indication (FIG. 2, ref. no. 238) with at least some physical resources (FIG. 3 and 4, ref. no. 300) in a computer system (p. 1, line 31-p. 2, line 1; p. 5, lines 18-20; p. 8, lines 6-7). The physical resources associated with the plurality of alert conditions are identified (p. 2, lines 1-2; p. 5, lines 20-21; p. 8, lines 15-16; FIG. 3 and 4, ref. no. 310). An alert condition is identified from among

the plurality of alert conditions based on the priority indication associated with the identified physical resources (p. 2, lines 2-4). The method also includes determining when a threshold metric associated with at least some of the plurality of alert conditions has been satisfied (p. 9, lines 6-11; FIG. 4, ref. no. 400). The selection of the alert condition from among the plurality of alert conditions based on the priority indication associated with the identified physical resources is carried out responsive to the determination that the threshold metric has been satisfied (p. 9, lines 7-11). The determination of when a threshold metric associated with at least some of the plurality of alert conditions has been satisfied includes determining when a number of queued alert conditions for the resource management system satisfies a threshold number (p. 9, lines 11-13).

Independent claim 11 recites a method of selecting among a plurality of alert conditions (p. 1, lines 29-31; p. 8, lines 4-6; p. 9, lines 6-7; FIG. 1, ref. no. 150; FIG. 2, ref. no. 234; FIG. 3 and 4, ref. no. 320) for processing with a resource management system (p. 1, line 31; p. 4, line 22; FIG. 1, ref. no. 130; FIG. 2, ref. no. 228). The method includes associating a priority indication (FIG. 2, ref. no. 238) with at least some physical resources (FIG. 3 and 4, ref. no. 300) in a computer system (p. 1, line 31-p. 2, line 1; p. 5, lines 18-20; p. 8, lines 6-7). The physical resources associated with the plurality of alert conditions are identified (p. 2, lines 1-2; p. 5, lines 20-21; p. 8, lines 15-16; FIG. 3 and 4, ref. no. 310). An alert condition is identified from among the plurality of alert conditions based on the priority indication associated with the identified physical resources (p. 2, lines 2-4). The method also includes determining when a threshold metric associated with at least some of the plurality of alert conditions has been satisfied (p. 9, lines 6-11; FIG. 4, ref. no. 400). The selection of the alert condition from among the plurality of alert conditions based on the priority indication associated with the identified physical resources is carried out responsive to the determination that the threshold metric has been satisfied (p. 9, lines 7-11). The determination of when a threshold metric associated with at least some of the plurality of alert conditions has been satisfied includes determining when a waiting time for alert conditions to be handled by the resource management system satisfies a threshold time (p. 9, lines 13-15).

Independent claim 12 recites a method of selecting among a plurality of alert conditions (p. 1, lines 29-31; p. 8, lines 4-6; p. 9, lines 6-7; FIG. 1, ref. no. 150; FIG. 2, ref. no. 234; FIG. 3 and 4, ref. no. 320) for processing with a resource management system (p. 1, line 31; p. 4, line

22; FIG. 1, ref. no. 130; FIG. 2, ref. no. 228). The method includes associating a priority indication (FIG. 2, ref. no. 238) with at least some physical resources (FIG. 3 and 4, ref. no. 300) in a computer system (p. 1, line 31-p. 2, line 1; p. 5, lines 18-20; p. 8, lines 6-7). The physical resources associated with the plurality of alert conditions are identified (p. 2, lines 1-2; p. 5, lines 20-21; p. 8, lines 15-16; FIG. 3 and 4, ref. no. 310). An alert condition is identified from among the plurality of alert conditions based on the priority indication associated with the identified physical resources (p. 2, lines 2-4). The method also includes determining when a threshold metric associated with at least some of the plurality of alert conditions has been satisfied (p. 9, lines 6-11; FIG. 4, ref. no. 400). The selection of the alert condition from among the plurality of alert conditions based on the priority indication associated with the identified physical resources is carried out responsive to the determination that the threshold metric has been satisfied (p. 9, lines 7-11). The determination of when a threshold metric associated with at least some of the plurality of alert conditions has been satisfied includes determining when a threshold rate of alert conditions is received for the resource management system (p. 9, lines 15-16).

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

The Examiner's rejection of Claims 10-12 under 35 U.S.C. §103(a) as being unpatentable over *Basson et al.* (U.S. Patent Application Publication 2002/0144147) (hereinafter *Basson*) in view of *Ward et al.* (U.S. Patent No. 5,367,670) (hereinafter *Ward*) is to be reviewed on Appeal.

ARGUMENTS

The rejection of Claims 10, 11, and 12 under 35 U.S.C. §103(a) as being unpatentable over *Basson* in view of *Ward* is not well founded and should be reversed.

Claim 10

On pages 9-10 of the present Office Action dated August 18, 2008, Claim 10 is rejected under 35 U.S.C. §103(a) as being unpatentable over *Basson* in view of *Ward*. The combination of *Basson* and *Ward* does not render Appellant's claimed invention obvious because neither reference nor the combination thereof suggests to one skilled in the art the features recited by Appellant's claims. Namely, the references and combinations fail to suggest the following:

“wherein said determining when a threshold metric associated with at least some of the plurality of alert conditions has been satisfied includes determining when a number of queued alert conditions for the resource management system satisfies a threshold number”

(Claim 10; emphasis added).

In the Office Action dated August 18, 2008, Examiner acknowledges that “**Basson does not explicitly disclose** wherein determining when a threshold metric associated with at least some of the plurality of alert conditions has been satisfied comprises determining when a number of queued alert conditions for the resource management system satisfies a threshold number” (emphasis added). Examiner primarily bases his arguments for rejecting these features of Appellant’s claim on *Ward*.

In his rejection of Claim 10, Examiner cites column 2, lines 62-66 of *Ward*, which states that:

*“In alternate aspects of this embodiment of the invention, the monitored information transfers may be the level of **voltage** supplied to the system manager or the **temperature** at which the system operates.”*

While the Examiner may be asserting the idea of determining alert conditions based upon monitored information transfers, the idea of measuring **voltage** and/or **temperature** values has no relevance to the threshold metric (i.e., **number of queued alert conditions**) recited in Appellant’s claim 10.

In contrast, Appellant’s invention teaches that the threshold is met when a specific threshold number of multiple alert conditions that are in a queue and awaiting handling by a resource management system have reached a specific aggregate quantity/number listed in the queue. Thus, the actual nature/type of alert conditions that may be present in the alert condition queue is irrelevant. Given these clear differences, one skilled in the art would not find

Appellant's claimed invention obvious in light of *Ward* or the combination of *Ward* with *Basson*. Thus, the rejection of Claim 10 is not well founded and should be reversed.

Claim 11

On pages 10-11 of the present Office Action dated August 18, 2008, Claim 11 is rejected under 35 U.S.C. §103(a) as being unpatentable over *Basson* in view of *Ward*. The combination of *Basson* and *Ward* does not render Appellant's claimed invention obvious because neither reference nor the combination thereof suggests to one skilled in the art the features recited by Appellant's claims. Namely, the references and combinations fail to suggest the following:

*“wherein said determining when a threshold metric associated with at least some of the plurality of alert conditions has been satisfied includes determining when a **waiting time for alert conditions to be handled by the resource management system** satisfies a threshold time”*

(Claim 11; emphasis added).

In the Office Action dated August 18, 2008, Examiner acknowledges that “*Basson **does not explicitly disclose** wherein determining when a threshold metric associated with at least some of the plurality of alert conditions has been satisfied comprises determining when a waiting time for alert conditions to be handled by the resource management system satisfies a threshold time”* (emphasis added). Examiner primarily bases his arguments for rejecting these features of Appellant's claim on *Ward*.

In his rejection of Claim 11 in the Office Action dated August 18, 2008, Examiner cites column 2, lines 62-66 of *Ward*, which states that:

*“In alternate aspects of this embodiment of the invention, the monitored information transfers may be the level of **voltage** supplied to the system manager or the **temperature** at which the system operates.”*

As similarly stated earlier, while the Examiner may be asserting the idea of determining alert conditions based upon monitored information transfers, the idea of measuring **voltage** and/or

temperature values has no relevance to the threshold metric (i.e., *waiting time for alert conditions waiting to be handled*) recited in Appellant's claim 11.

In contrast, Appellant's invention teaches that the threshold is met when a specific threshold **waiting time** for alert conditions, which are stored in an alert condition queue and waiting to be handled by a resource management system, has been satisfied.

Moreover, on page 2 of the Advisory Action dated October 20, 2008, the Examiner cites col. 10, lines 52-67 of *Ward* in his rejection of Claim 11:

"As previously mentioned, alerts delivered to the pager 54 or the phone 56 are made via the modem 84 under the control of the control processor 68. When, however, an alert message is delivered to the phone 56, the voice synthesis logic 82 is utilized by the control processor 68 in order to generate an audible, voice alert. Pre-recorded voice messages are stored within the voice synthesis logic 82. These voice messages, which are stored in accordance with adaptive differential pulse code modulation, relate to a multitude of messages which may be accessed by the control processor and transmitted. For example, dates, numbers, alert conditions, names, voltages which correspond to the information [sic] useful to identify the type, severity, time of, location, or other identifying information regarding alert conditions."

In view of the quoted text that is cited immediately above, nowhere in the quoted text of *Ward* is it taught that a **waiting time** of alert conditions waiting in an alert condition queue serves as a threshold metric. Moreover respectfully, it appears that the last sentence of the quoted text of *Ward* fails to serve as a complete sentence and, hence, is unsuitable to communicate the particular idea recited in Claim 11. While the last sentence in the quoted citation in *Ward* may contain the words "alert conditions" and "time", the cited passage is a far cry from communicating an actual **waiting time** threshold for alert conditions in a queue awaiting corrective action. Thus, one skilled in the art would not find Appellant's claimed invention obvious in light of *Ward* or the combination of *Ward* with *Basson*. Thus, the rejection of Claim 11 is not well founded and should be reversed.

Claim 12

On pages 11-12 of the present Office Action dated August 18, 2008, Claim 12 is rejected under 35 U.S.C. §103(a) as being unpatentable over *Basson* in view of *Ward*. The combination of *Basson* and *Ward* does not render Appellant's claimed invention obvious because neither reference nor the combination thereof suggests to one skilled in the art the features recited by Appellant's claims. Namely, the references and combinations fail to suggest the following:

“wherein said determining when a threshold metric associated with at least some of the plurality of alert conditions has been satisfied includes determining when a threshold rate of alert conditions is received for the resource management system”

(Claim 12; emphasis added).

In the Office Action dated August 18, 2008, Examiner acknowledges that “*Basson does not explicitly disclose* wherein determining when a threshold metric associated with at least some of the plurality of alert conditions has been satisfied comprises determining when a threshold rate of alert conditions are received for the resource management system” (emphasis added). Examiner primarily bases his arguments for rejecting these features of Appellant's claim on *Ward*.

In his rejection of Claim 12 in the Office Action dated August 18, 2008, the Examiner cites column 2, lines 62-66 of *Ward*, which states that:

*“In alternate aspects of this embodiment of the invention, the monitored information transfers may be the level of **voltage** supplied to the system manager or the **temperature** at which the system operates.”*

Similarly, in his rejection of Claim 12 in the Advisory Action dated October 20, 2008, the Examiner cites col. 6, lines 13-30 (monitoring a “drop in system power”) and col. 6, lines 46-58 (monitoring a change in temperature values).

As similarly stated earlier, while the Examiner may be asserting the idea of determining alert conditions based upon monitored information transfers, the idea of measuring **voltage** and/or **temperature** values has no relevance to the threshold metric (i.e., *rate of alert conditions received for a resource management system*) recited in Appellant's claim 12.

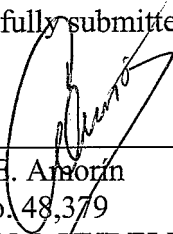
In contrast, Appellant's invention teaches that the threshold is met when a specific threshold **rate** of alert conditions being received for a resource management system has been satisfied. Nowhere in *Ward* does it teach the **rate** in which alert conditions are received (and enqueued) for a resource management system. Furthermore, the Examiner has mischaracterized the teachings of *Ward*. Column 6, lines 13-30 and 46-58 of *Ward* fails to teach changes in the number of alert conditions that are received over a period of time (i.e., rate). Instead, *Ward* merely teaches monitoring changes in system power and/or temperature (see *Ward*, col. 6, lines 13-30 and 46-58).

In view of the foregoing, one skilled in the art would not find Appellant's claimed invention obvious in light of *Ward* or the combination of *Ward* with *Basson*. Thus, the rejection of Claim 12 is not well founded and should be reversed.

CONCLUSION

Appellant has pointed out with specificity the manifest error in the Examiner's rejections and the claim language which renders the invention patentable over the various combinations of references. Appellant, therefore, respectfully requests that this case be remanded to the Examiner with instructions to issue a Notice of Allowance for all pending claims.

Respectfully submitted,



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CLAIMS APPENDIX

1.-9. (canceled)

10. A method of selecting among a plurality of alert conditions for processing with a resource management system, the method comprising:

associating a priority indication with at least some physical resources in a computer system;

identifying the physical resources associated with the plurality of alert conditions; and

selecting an alert condition from among the plurality of alert conditions based on the priority indication associated with the identified physical resources;

determining when a threshold metric associated with at least some of the plurality of alert conditions has been satisfied, wherein the selecting the alert condition from among the plurality of alert conditions based on the priority indication associated with the identified physical resources is carried out responsive to the determination that the threshold metric has been satisfied;

wherein said determining when a threshold metric associated with at least some of the plurality of alert conditions has been satisfied includes determining when a number of queued alert conditions for the resource management system satisfies a threshold number.

11. A method of selecting among a plurality of alert conditions for processing with a resource management system, the method comprising:

associating a priority indication with at least some physical resources in a computer system;

identifying the physical resources associated with the plurality of alert conditions; and

selecting an alert condition from among the plurality of alert conditions based on the priority indication associated with the identified physical resources;

determining when a threshold metric associated with at least some of the plurality of alert conditions has been satisfied, wherein the selecting the alert condition from among the plurality of alert conditions based on the priority indication associated with the identified physical resources is carried out responsive to the determination that the threshold metric has been satisfied;

wherein said determining when a threshold metric associated with at least some of the plurality of alert conditions has been satisfied includes determining when a waiting time for alert conditions to be handled by the resource management system satisfies a threshold time.

12. A method of selecting among a plurality of alert conditions for processing with a resource management system, the method comprising:

associating a priority indication with at least some physical resources in a computer system;

identifying the physical resources associated with the plurality of alert conditions; and

selecting an alert condition from among the plurality of alert conditions based on the priority indication associated with the identified physical resources;

determining when a threshold metric associated with at least some of the plurality of alert conditions has been satisfied, wherein the selecting the alert condition from among the plurality of alert conditions based on the priority indication associated with the identified physical resources is carried out responsive to the determination that the threshold metric has been satisfied;

wherein said determining when a threshold metric associated with at least some of the plurality of alert conditions has been satisfied includes determining when a threshold rate of alert conditions is received for the resource management system.

13.-20. (canceled)

EVIDENCE APPENDIX

Other than the Office Action(s), Advisory Action and reply(ies) already of record, no additional evidence has been entered by Appellant or the Examiner in the above-identified application which is relevant to this appeal.

RELATED PROCEEDINGS APPENDIX

There are no related proceedings as described by 37 C.F.R. §41.37(c)(1)(x) known to Appellant, Appellant's legal representative, or assignee.